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EXAMINER

ADAMS, GREGORY W

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/612,254
Filing Date: July 02, 2003
Appellant(s): LAMBRIGHT, MICHAEL

Michael S. Gzybowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 30, 2008 appealing from the Office action mailed Nov. 14, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of claimed subject matter contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 11-22 is rejected under 35 U.S.C. 102(b) as being anticipated by Chandler (US 3,760,965).

With respect to claims 1, 9 & 18-20 & 22, referring to FIGS. 16-17 Chandler discloses a support arm 23 having an axis and capable of supporting a spare tire, and further discloses an upper planar guide plate 53 attached to an upper tubular member 27F, lower planar guide plate 59 attached to a lower tubular assembly (61 in FIG. 7) wherein an upper plate is coupled to a lower plate for relative rotational movement for rotating an arm 23 about a common axis 55 and a support arm central axis (see FIGS. 16-17).

It is noted that although Appellant recites a spare tire carrier Appellant merely recites an arm with the body of claim 1 and does not positively recite structure that defines spare tire engaging structure. Thus, Chandler's motorcycle carrier arm is capable of supporting a spare tire.

With respect to claims 3-5 & 11-13, Chandler discloses upper and lower tubular members each have a central axis and are attached at an angle that is non-perpendicular (FIG. 7, angle α) and are collinear and hollow.

With respect to claims 6-7 & 14-15, Chandler discloses an axially central element 65 having threads.

With respect to claims 8 & 16, Chandler discloses a latch mechanism 41.

With respect to claim 17, Chandler discloses an arm 23 that includes structure that engages a latch mechanism 41.

With respect to claim 21, Chandler discloses a tire mounting bracket 79. It is noted that a “central portion” is any portion that includes the center, e.g. anything but the extremity, and at least a portion that includes Chandler’s bracket 79 as it is spaced in from the end of arm 23. Further, claim 21 merely requires a tire mounting bracket without regard to particular structure which defines over Chandler’s bracket 79.

(10) Response to Argument

Comparison between claim 1 structure and cited prior art	
<u>Instant Application</u>	<u>US 3,760,965 to Chandler</u>
support arm	23
support arm fixed end	23D
support arm free end	23E
support arm central axis	(indicated generally as 23); FIG. 17, re: tilt angles

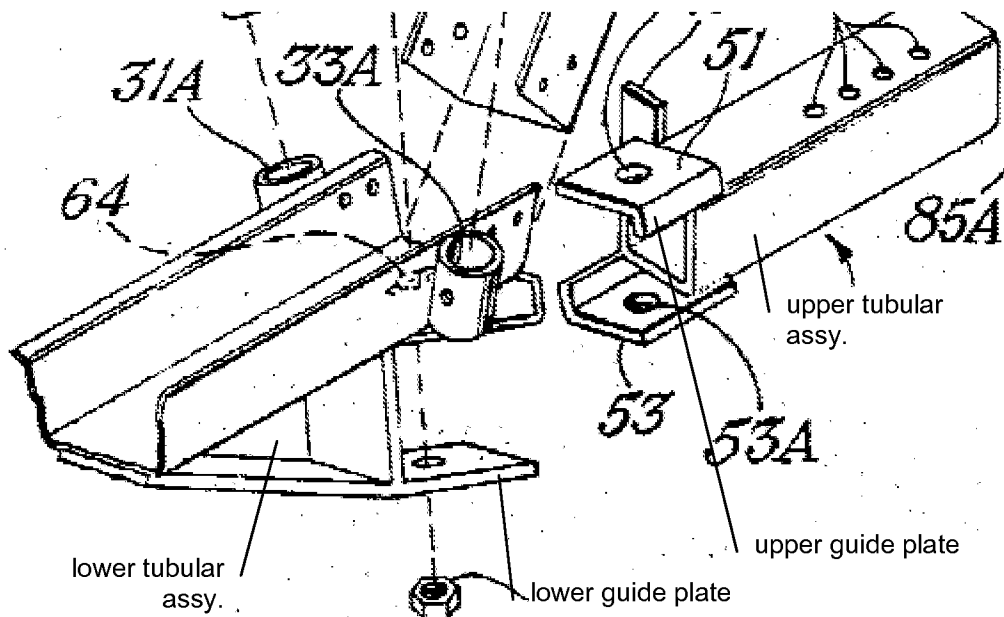
assembly upper planar guide plate	53
upper tubular member	27F
lower planar guide plate	59
lower tubular member	FIG. 7: (that structure defined by wall 23, 61 & 63
common axis (which extends through upper and lower guide plates)	FIG. 7: 55; FIG. 16 (for relative rotation)
common central axis of pivot	FIG. 6: 65

Claims 1, 9, 18-20 & 22

Appellant argues that a skilled artisan would not consider Chandler as disclosing tubular structure or that a drawer, doorway or ladder are tubular are not tubular. It is not the examiners position that a drawer, doorway and ladder are tubular or tubes or can be used on a vehicle attached carrier or that they comprise tubular features. The issue is whether Chandler discloses upper and lower tubular members as defined by the intrinsic and extrinsic evidence. Initially, it is noted that the claims do not recite “tube” and the application as disclosed does not define tubular. Appellant utilized extrinsic evidence that define tubular.

Tubular is defined as “having the form of or consisting of a tube” and a tube is defined as “any of various usually cylindrical structures or devices: as a hollow elongated cylinder”. See Appellants Brief, page 6. Under the broadest reasonable

interpretation, there must merely be structure that is cylindrical but does not have to be a tube. With respect to FIG. 6 reproduced below Chandler discloses tubular structure defined by plates 23, 61 & 63 clearly define tubular structure, i.e. "consisting of a tube".



Chandler's plates 23, 61, 63 clearly have the form of a "hollow elongated cylinder". "Isolating" Chandler's upper tubular member is irrelevant because Chandler's lower tubular assembly is "lower" inasmuch as it is below support arm 23 and because it is attached to lower guide plate. Chandler's upper tubular assembly is "upper" because it supports upper guide plate 51. And, "upper" and "lower" without regard to other structure is interpreted as disclosed by the cited prior art. Chandler's upper tubular assembly is at least above upper guide plate 53, upper guide plate 53 is at least above lower guide plate 59 and lower tubular member (indicated generally as 61) and lower guide plate are at least below arm 23. Appellant intends that the tubular members and

plates to be defined relative to each other and the arm, but that is not the only reasonable interpretation available from the claims. Thus, the claims are not limited to tubes but merely tubular features which are disclosed in the cited prior art.

Appellant argues that Chandler's tubular structure must be separate from that of other structure, that plates 61 & 63 cannot utilize channel 23 to complete the tube. The claims do not recite specific features of the tubular structure, i.e. tube, walls etc. Chandler's arm includes upstanding, angled walls and a base. The base of arm completes Chandler's tubular structure whereas arm comprises upstanding, angled portions. Chandler's tubular assembly 61, 63 is coupled to channel 23 thus completing the third side of lower tubular assembly. Given Appellants definition for tubular one skilled in the art would logically conclude that a third plate is unnecessary additional expense and merely connect sides 61 and 63 to arm 23 eliminating expense.

Chandler's central axis 65 is supported by both tubular members and guide plates as shown above. In addition, lower tubular assy. and guide plate rotate relative to upper tubular assy. and guide plate. FIG. 16 discloses relative motion between lower tubular assy. and guide plate about a common axis as well as a central axis of pivot 55, 65.

In response to Appellants argument that the references fail to show certain features of Appellants invention, it is noted that the features upon which Appellant relies (i.e., "a tubular member having a central axis that extends through the center of the tubular member") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into

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the claims. Claims 1 & 9 recite "a common axis which extends through the upper and lower guide plates". Chandler's axis 65 is common to both upper and lower tubular assemblies because it extends through plates 53, 59 which allows relative motion of lower tubular assy. about upper tubular assy.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gregory Adams, Examiner, AU 3652 /G. W. A./

Conferees:

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